

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 650 of 2019
Date of filing complaint: 26.02.2019
First date of hearing : 30.07.2019
Date of decision : 16.11.2022

1. Anjali Mehta 2. Aditi Mehta Both r/o: - LCG 404-A, The Laburnum, Sushant Lok -I, Gurugram, Haryana-122002	Complainants
Versus	
1. Dlf Home Developers Limited 2. Corporate Greens Condominium Association Regd. Office at: - 2nd, Dlf Gateway Tower, R-Block, Dlf City, Phase-II, Gurugram- 122002	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. R Gayatri (Advocate)	Complainants
Sh. Ishaan Dang (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Dlf Corporate Greens, Sector 74 A, Gurugram
2.	Project Area	25.7115 acres
3.	Nature of the project	Commercial colony
4.	DTCP License no. & validity status	51 of 2008 dated 19.03.2008 valid up to 18.03.2020
5.	Name of licensee	Abheek Real Estate Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	Not Registered
7.	RERA registration valid up to	28.08.2022
8.	Unit no	DCG2 -1103 Tower 2

			Parkings No. PB/T2-3141/PBT2-3142/PBT2-3143 (Page no. 62 of reply)
9.	Unit area admeasuring		164.44 sq. ft. (Page no. 62 of reply)
10.	Date of execution of apartment buyer agreement		30.05.2011 (Page no. 59 of the reply)
11.	Possession Clause		10.2 Schedule for possession <i>10.2 The Intending Seller based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Premises within a period of thirty six (36) months from the date of allotment of the said Premises unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (39) or due to failure of Intending Allottee(s) to pay in time the total sale price of the said Premises along with other charges and dues in accordance with the Schedule of Payments given in Annexure II or as per the demands raised by the Intending Seller from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement</i> (Page 74 of the complaint).
12.	Due date of possession	of	30.05.2014 [Calculated from the date of execution of the agreement)

13.	Total sale consideration	Rs. 1,13,31,499.57 /- (Page 98 of the buyer's agreement)
14.	Amount paid by the complainants	Rs.1,17,10,142 /- (As pleaded by the complainants)
15.	Occupation certificate	19.06.2014 [Page 31 of reply]
16.	Intimation of possession/ Possession letter	27.06.2014 /01.01.2015 / 25.01.2016 Annexure P-10 page 112 page 138 of reply (Page 143 of the CRA)

B. Facts of the complaint

3. A property bearing no. DCG2-1103 and parking space no. PB/T2-3141, PB/T2-3142, PB/T2-3143 admeasuring 1770 sq. in the project Dlf Corporate Greens being the project of respondent builder was purchased by Devinder Gupta & Sons realtors private limited (Allottee") on the base of application dated 29.09.2008 for Rs. 1,72,125,0 exclusive of service tax.
4. On 27.10.2010 the property was purchased by Mr. Anil Mehta in terms of the agreement to sell of even date executed between him and the original allottee detailed earlier. A letter of request of that date was given by the original allottee to the respondent for transfer of the allotted unit in favour of Mr. Anil Mehta and who also wrote a letter for transfer of allotment of the unit in his favour. The original allottee also signed a declaration and an affidavit for transfer of allotment in favour of Mr. Anil Mehta as evident from documents annexure p1-p-7 attached with the complaint. On 27.10.2010 a letter was issued to the Allottee by DLF Universal Limited regarding payment of Rs. 17, 21,250/- as

full and final settlement in relation to the transfer of property to Mr. Mehta to DLF Universal Limited for treating him as a nominee of the said property. It led to execution of commercial office space buyer's agreement(annexure p8) between the purchaser Mr. Anil Mehta and the respondent builder on 30.05.2011. The due date for completion of the project and offer of possession of the allotted unit was to be calculated from the execution of the buyer's agreement and which comes to be 30.05.2014.

5. A tripartite agreement for maintenance of the allotted unit was also executed between Mr. Anil Mehta and respondents (page 89 of the reply)
6. That the occupation certificate of the project was granted on 19.06.2014 and the same was informed to the allottee vide letter dated 27.06.2014. That on 01.01.2015, a letter was sent by the respondent- builder seeking balance payments in accordance with the statement of accounts and requiring execution of the required documents in relation to taking possession of the said property. On 08.01.2015, a letter was again issued by the respondent- builder to the allottee requesting him to make payment as requested earlier and execution of the tripartite maintenance agreement along with the completion of necessary paperwork for the purpose of issuance of possession letter.
7. That on 30.01.2015, respondent- builder issued another letter asking for e-mail id and phone number of the allottee to improve the customer relations and to make it easy for allottees to be updated

with communications. The allottee issued two legal notices to the respondent-builder dated 11.03.2015 highlighting discrepancies in statement of account and asking payment of compensation from it in terms of the provisions of buyer's agreement.

8. The respondent- builder sent its reply to the aforesaid letter by stating that since the allottee had defaulted in the payment of instalments, he would not be paid any compensation. However, it informed the allottee that it has waived off the delayed interest of Rs 15,948/- . The respondent- builder again issued letter dated 24.07.2015 to the allottee asking for payment of the due instalments and completion of paperwork for handing over possession of the property. Thereafter on 17.08.2015, the allottee paid the last instalment in relation to the said property vide cheque dated 17.08.2015 amounting to Rs 14,15,351/-
9. On 17.09.2015, a copy of letter from the respondent- builder regarding balance payment to be made by the allottee and completion of formalities by him for obtaining possession of the property was sent. On 02.11.2015, a notice was issued by Municipal Corporation of Gurgaon under section 130 of Haryana Municipal Corporation Act regarding recovery of property tax pursuant to Section 87 A of the Haryana Municipal Corporation Act, 1994, and according to which every property owner/occupier was liable to pay property tax as per self-assessment policy. In pursuant to the said notice, DLF Home Developers Limited was directed to pay Rs. 2,23,343/- as property tax assessment for the period from 2008-09 to 2015-16 in Citizen Facility Centre of Municipal Corporation, Gurgaon.

10. That the allottee sent a letter on 30.11.2015 to respondent-builder stating that he was ready to pay the balance consideration amount to it and ready to take all necessary steps to get the property registered in his name along with the physical possession. On 10.12.2015, respondent-builder issued a letter requesting the allottee to complete the possession formalities before 15.01.2016. Mr. Anil Mehta then sent an e-mail on 21.12.2015 followed by another email dated 12.01.2016 to respondent-builder seeking all required documents for taking physical possession of the property, a date for delivery of possession and upto date statement of account .

11. Thereafter, respondent-builder issued the possession letter dated 25.01.2016 to Mr. Anil Mehta in which it was stated as under -

Please note that this letter is valid upto 29/2/16 after which, penalties / holding charges are applicable in terms of the Commercial Space Buyers Agreement in case possession of the premises is not taken over and put to use."

"Subject to payment of IBMS I/We have settled the financial terms with the company as far as the cost and other charges pertaining to this property are concerned and for this we have no claim whatsoever, towards the company on the property mentioned above except the Move in Rebate, if applicable.

We shall inspect the property on taking over and shall be signing a separate acceptance letter so far as the construction is concerned, as is the procedure".

12. That on 15.02.2016, the allottee sent an e-mail to the respondent-builder stating that he had been issued a possession letter malicious and ill-intentioned as it has been bullying the allottee to sign various indemnities; (b) In spite of following up for possession, the same has been delayed on one pretext or another without any reasonable cause; (c) the possession letter mentioned waiver of claims by the allottee against DLF Universal Limited regarding delay in delivery of possession and registration of the Property; (d) DLF Universal Limited has been blackmailing the nominee by making him sign no claim / waiver of claim against it (e) the property, as on the date of possession was not fit to use and DLF Universal Limited has mentioned in the possession letter that if the property was not put to use by 29.02.2016, penalties / holding charges would be applicable, such paradoxical stand clearly communicate the malafide intent of DLF Universal Limited; (f) All terms and procedures are biased in favour of DLF Universal Limited and have no legal backing; (g) DLF Universal Limited has taken its own sweet time to offer possession of the property and has been non-committal in giving registration date.

13. That on 26.02.2016, the allottee sent a reminder e-mail to the respondent-builder asking for the reply to the e-mail dated 15.02.2016 and stating that it is delaying the delivery of possession by not replying to his emails. However on 26.02.2016, (its official) replied to the allottee above e-mail dated 26.02.2016

asking him when he would like to come for taking over the possession. The allottee replied to the above e-mail dated 26.02.2016 on 20.03.2016, stating that he would be available to take the possession in the following week. He also stated that since he has made all the payments towards the registration of the property, he would like to know the date for possession as well as registration as he had a corporate tenant who was ready to take the property on lease and which would be possible only if the property was registered in his name.

14. On 21.03.2016, an e-mail was received from Mr. Anish Abraham ,an official of respondent-builder stating that the registration of the property would start tentatively in a month's time' The allottee, on the same day replied to the aforesaid e-mail by stating that:

(a) Despite all payments including registration charges having been made by the nominee, DLF Universal Limited had not registered the Property in his name, (b) DLF Universal Limited did not give a firm date for registration of property even after a long delay; (c) The allottee did not wish to be a party to any illegal act of DLF Universal Limited since the title of the property is defective (d) The allottee had made the payment of Stamp duty two months earlier, as per the demand of DLF Universal Limited but still the property had not been registered in his name. Thus, he sought refund of the amount of stamp duty

along with interest @ 15% i.e. the same rate DLF Universal Limited was charging him for the delay in payment of instalment, (e) DLF Universal Limited was forcing the allottee to sign a contract of maintenance with a maintenance agency which had been constituted at the whims and fancies of DLF Universal Limited the allottee was not informed about the selection of office bearers of the maintenance agency and the procedure followed by it, and (f) The allottee had suffered losses due to delay in the registration of the property.

15. On 20.04.2016 and 18.05.2018, the allottee again sent emails requesting the respondent-builder to refund the registration money immediately and intimated that all damages due to delay in giving possession would be its liability.
16. On 18.05.2016, Mr. Anish Abraham replied to the allottee's e-mail of the same date, mentioning details of the cheque issued for refund of registration amount deposited by him. The said cheque was dispatched to him on 16.06.2016. On 02.06.2016, affidavit was executed by the allottee to substitute his name with the names of complainants in respect of property. Thereafter, respondent -builder issued a letter dated on 29.06.2016 confirming the same and substituting the complainants as allottees of the unit instead of him.
17. That from 28.07.2016 to 03.01.2017, several e-mails were sent by the complainants to the respondent-builder asking for registration of

the property. On 03.01.2017, the respondent-builder informed the complainants that registration in relation to the project would start soon. Vide orders of the Hon'ble High Court of Punjab and Hon'ble High Court of Delhi dated 29.03.2016 and 11.11.2016, the scheme of demerger of DLF Universal Limited from the respondents No. 1 was approved and the same was communicated to Mr. Anil Mehta vide letter dated 06.05.2017.

18. That the complainants sent an e-mail dated 03.12.2017, wherein they stated as under :

- (a) they have made all the payments towards sale consideration of the property almost 2 years earlier (b) The respondents No. 1 has refunded the registration charge which signifies its inability to register the property in the name of the complainants. (c) The respondents No. 1 defrauded the complainants by taking entire consideration amount towards the sale consideration of the property and not conveying the title of the Property: dud conveyance (d) The respondents No. 1 did not register the property in favour of complainants as the title of the property is defective. Since the complainants did not want to be part of illegal actions of the respondents No. 1, they did not take possession of the property (e) The respondents No. 1 was only responsible for cost and damages for the delay in delivery of possession, and (f) complainants sought the date of registration of the property and a clear title of the property free from all dues.

19. That Mr. Anish Abraham (An official of the respondents), replied to the e-mail of the complainants dated 03.12.2017 vide its e-mail dated 08.12.2017, stating that the possession letter had already been issued to Mr. Anil Mehta, the allottee on 25.01.2016 and there was no hurdle in taking the possession of the property as the occupancy certificate in respect to the property had already been obtained. It was stated that non-acceptance of the possession would be at the risk and liability of complainants. It was also stated that the maintenance charges for the property are to be paid by them, as per the bill raised by respondents No. 2 on a pro rata basis. The property taxes raised by Municipal Corporation of Gurgaon were also payable to the respondents No. 2.
20. That on 08.12.2017 the complainants replied to the above email stating they would not take possession until registration of the property is done in their favour. It was stated that the complainants were losing rental income as they were unable to let out the property until the title of the property is transferred to them. They also submitted that they were not liable to pay for the maintenance of the property and property tax as the title of property was not transferred to them. Further, they stated they did not receive any bill from the Municipal Corporation of Gurgaon in relation of payment of property tax. Therefore, complainants sought either the refund of the entire sale consideration amount along with interest or offer of possession of the property along with indemnities for losses suffered by them

- for delay in delivery of possession and to register the property at the earliest.
21. On 12.12.2017 an e-mail was sent by Mr. Anish Abraham replying to the above e-mail of the nominee dated 08.12.2017 stating that "DLF is committed to register the unit and same shall be done in sometime". The allottees replied to above e-mail by an e-mail dated 12.12.2017 stating that they would be happy to take the possession if the respondents No. 1 gave them a definite date of registry in writing and indemnifies against the wrongdoing and delay in registering the property. That on 20.11.2018, the respondents No. 2 raised a tax invoice in relation to the maintenance charges of the property, even though the property has still not been registered in the name of the complainants.
22. On 01.02.2019, the complainants sent a letter to the respondents stating that since they have not been conveyed the title of the property, they are not liable to bear the maintenance charges of the property and the property tax. It was further stated that the respondents No. 2 had been constituted in an arbitrary manner without obtaining consent from the complainants and thus, the decision of the respondents No. 2 is not binding on them.
23. That on 04.02.2019, the complainants received the latest statement of accounts from the respondents No. 1. and were shocked to know that the charges towards property tax had been debited to their account.

24. That despite long delay in delivery of possession and several reminders sent by the complainants for registration and transferring of the title of property, the title of the property has still not been transferred to them. The complainants were left with no other alternative but to file the present complaint seeking refund of the paid-up amount besides interest and compensation.

C. Relief sought by the complainants.

25. The complainants have sought following relief:

- (i) Direct the respondent to refund sum of Rs. 1, 17,10,142/- along with prescribed rate of interest.
- (ii) Direct the respondent to pay compensation of lease rental income to the complainants.
- (iii) Direct the respondent to pay compensation for harassment, despair and mental turmoil for continuous follow up.

D. Reply by the respondents.

26. The respondents by way of joint written reply dated 03.09.2019 made the following submissions.

27. That the respondent no. 1 has developed a commercial complex known as DLF Corporate Greens, situated in Sector 74A, Gurugram, in accordance with permissions, approvals and sanctions from the competent authorities. Licence no 51 of 2008 and grant of renewal of the aforementioned license dated 06.08.2018 whereby the said license had been renewed upto 18.03.2020.

28. It is pertinent to mention that the license referred to hereinabove was granted in favour of M/s Apramey Infrastructure Private Limited, M/s Shramika Buildcon Private Limited, M/s Lakshya Buildtek Private Limited, M/s Shivsagar Builders Private Limited, Mr. Rajinder Singh Cheema, Mrs. Jaspal Cheema, Mr. B.S. Mathur, Mr. B.S. Mathur (HUF), Mrs. Santosh Mathur, Mr. Sanjeev Jain (HUF), Mr. Rajeev Jain (HUF), Mr. Girish Jain, Mr. Pawan Duggal, M/s Garv Developers Private Limited and M/s Dae Real Estates Private Limited (hereinafter collectively referred to as "the Land-Owning Persons"). Furthermore, DLF Retail Developers Limited (DRDL) has entered into collaboration/development agreements with the land-owning persons whereby DRDL had been authorized to construct, develop and market various commercial building(s) on the plot of land subject matter of the license referred to above, at its own costs, in accordance with the permitted land uses and sanctions and clearances from the competent authorities.

29. It is further pertinent to mention that DRDL had entered into an agreement with M/s DLF commercial complexes Ltd. to sell the development rights derived from the land owning persons to M/s DLF commercial complexes Ltd including the rights to market, sell, transfer, convey the retail/office/entertainment centre/parking spaces(s)/other commercial space(s) in the multi storeyed buildings that was to be constructed on the said plot of land, collect advances, receive sale consideration and act on all incidental issues/matters relating thereto. M/s DLF commercial

complexes Ltd was amalgamated with DLF Retail Developers Ltd. and further name of DLF Retail Developers Ltd was changed to DLF Universal Ltd. As referred to hereinabove, DLF Universal has amalgamated with DLF Home Developers Ltd.

30. That for the project in question, the occupation certificate was received on 19.06.2014 and deed of declaration was filed on 16.09.2014 for 25.7115 acres based on the building plans approved by DGTCP vide memo no. 49819 on 30.08.2013. In the aforesaid plans, the access to the project was from the sector dividing road of Sector 35 and Sector 74A in accordance with Gurgaon-Manesar plan 2021. Later on, the proposed sector road was omitted by the Government in the subsequent Master Plan 2031. Consequently, the additional area was pooled for better accessibility and subsequently, the project was revised 36.4425 acres. Therefore revision/amendment in the deed of declaration was necessitated to not only bring all relevant approvals/permissions/declarations in line with each other The respondent-promoter is awaiting the order/direction from the competent authority regarding the change indeed of declaration etc. It is submitted that as and when the requisite communication is received from DGTCP, it would proceed to complete the necessary amendment in the declaration and complete other formalities including execution of conveyance deed.

31. That the office space in question (unit no. DCG2-1103 super area measuring 1770 Square feet, situated in "Corporate Greens") was initially allotted to M/s Devinder Gupta & Sons Realtors Pvt. Ltd. . Mr Anil Mehta, the predecessor in interest of the complainants

- requested respondent no. 1 vide letter dated 27th of October 2010 to treat him as transferee of the said commercial unit. Letters dated 22.10. 2010, 17.12. 2010, 03.01.2011, 10.01.2011 were sent by respondent no. 1 to the predecessor in interest of the complainants calling upon him to make payment of the outstanding amount.
32. That an agreement to sell had been sent for execution by respondent no. 1 to Mr Anil Mehta, the predecessor in interest of the complainants along with letter dated 19.01. 2011 enclosing two copies of the commercial buyer's agreement. Since, Mr Anil Mehta, the predecessor in interest of the complainants was not paying the outstanding amount, letters dated 01.02.2011, 16.02.2011, dated 07.03.2011, 11.03.2011, 04.04.2011, 18.04.2011 respectively were sent by respondent no. 1 to him to make payment of the outstanding amount and the same was executed on 30.05.2011.
33. That prior to making the booking, Mr Anil Mehta had made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent no. 1 for the purpose of undertaking the development/implementation of the commercial project subject matter of the present complaint. Mr Anil Mehta had taken an independent and informed decision, uninfluenced in any manner by the respondent no. 1 to book the unit in question, after making extensive enquiries and duly satisfying himself regarding the viability and suitability of the aforesaid project as per his needs and requirements as well as the capability of the respondent no. 1 to undertake the project.

34. That Mr Anil Mehta proved to be a chronic defaulter of instalments of consideration payable towards the commercial unit. It is pertinent to mention that time was specified to be the essence of the transaction in the agreement dated 30.05.2011. Even after execution of aforesaid agreement, letters dated 03.08.2011, 02.12.2011 and 04.04.2012, 27.01.2014, 10.02. 2014, 28.02. 2014, respectively were sent by respondent no. 1 to Mr Anil Mehta calling upon him to make payment of the outstanding amount indicated in the said letters.
35. That all the aforesaid demand letters have been conveniently concealed by the complainants while filing the complaint. As highlighted above, occupation certificate for the project had been granted/issued by Directorate of Town & Country Planning, Haryana, Chandigarh vide memo dated 19.06.2014. Accordingly, letter dated 27.06.2014 followed by letters dated 01.01.2015 and 08.01.2015 had been addressed by respondent no. 1 to Mr Anil Mehta to take possession of the allotted unit after completing possession formalities and paying the amount due as per the statement account sent to him but with no positive results . That instead of making the desired payment and to obtain physical possession of the commercial unit, Mr Anil Mehta had addressed two false, frivolous, baseless and vexatious letters, both dated 11.03.2015 wherein legally and factually contentions were put forth by him.
36. That letter dated 27.03.2015 had been sent by respondent no. 1 to Mr Anil Mehta whereby it was specifically communicated by respondent no. 1 that no compensation in the manner claimed by

him would be paid by respondent no. 1. Notwithstanding the categorical refusal of respondent no. 1 to accede to the illogical and irrational request of Mr Anil Mehta, the outstanding payments were not made and physical possession of the commercial unit was not obtained from respondent no. 1.

37. That under these circumstances, letter dated 24.07.2015 was sent by respondent no. 1 to Mr Anil Mehta whereby he was once again called upon to make payment of the outstanding amount and to complete the paperwork for delivery of physical possession of the commercial unit. Another letter dated 24.07.2015 was sent by respondent no. 1 to Mr Anil Mehta whereby it was communicated to him that as a gesture of , respondent no. 1 had decided not to charge delayed interest on instalments as applicable in case he proceeds to complete all payments and paperwork up to 18.08.2015.

38. That all the aforesaid letters were duly received by Mr Anil Mehta. However, the demanded payments were not made and in physical possession of the commercial unit was not obtained. Under these circumstances another letter dated 17.09.2015 was sent by the respondent no. 1 to Mr Anil Mehta whereby once again physical possession of the commercial unit was offered to him. That only much later vide letter dated 30.11.2015, Mr Anil Mehta agreed to make payment of the outstanding amount and to obtain physical possession of the aforesaid commercial unit.

39. That in order to expedite the delivery of physical possession ,another letter dated, 10.12.2015 was sent by respondent no. 1 to Mr Anil Mehta whereby physical possession of the aforesaid

commercial unit was once again offered along with financial incentive. Eventually, on 21.12.2015 email was sent by Mr Anil Mehta wherein indemnity bond along with other annexures had been sent across to respondent no. 1.

40. That scrutiny of the indemnity-cum-undertaking dated 22.2015 was duly executed by Mr Anil Mehta makes it evident that by virtue of the same, he had foreclosed his rights, in favour of the respondent no. 1 categorically stating, inter-alia, he did not have any pending dispute/difference/claims/counterclaims of any nature whatsoever with it in respect of the office space in question.

41. That although, respondent no. 1 had repeatedly urged Mr Anil Mehta to make payment of the outstanding amount and to obtain physical possession, yet he did not come forward to obtain the same. In order to generate unwarranted controversy and to collect false evidence to the prejudice of respondent no. 1, emails dated 12.01.2016, 15.02.2016, 20.04.2016 are claimed to have been sent by Mr Anil Mehta to it to provide him statement of accounts and date for delivery of physical possession. Actually, all these emails were never received by it.

42. That subsequently, a request for transfer of allotment of the commercial unit in question was submitted by Mr Anil Mehta in favour of the complainants. Similarly, emails dated 28.07.2016, 04.08.2016, 03.01.2017 another email dated 03.01.2017 were not received by respondent no. 1. In fact, Mr Anil Mehta and subsequently, the complainants were intentionally delaying the obtaining of physical possession of the apartment.

43. That email dated 03.12.2017 had been sent by Mr Anil Mehta claiming the title in respect of the commercial unit in question being defective. In fact, needless controversy was sought to be generated by Mr Anil Mehta by virtue of the aforesaid email.
44. That letter dated 08.12.2017 had been sent by respondent no. 1 whereby it was highlighted that physical possession pertaining to the commercial unit had been offered on 25.01.2016. It was highlighted in the said letter that registration of conveyance deed and obtaining of physical possession were to completely different and independent aspects and there was absolutely no hurdle for the complainants to obtain physical possession of the commercial unit. It was further highlighted that maintenance charges for the upkeep of common areas were required to be pro rata paid by the allottees. It was also intimated to the complainants that property tax in respect of the commercial unit would also be liable to be paid to Municipal Corporation Gurgaon. Actually, all these aspects had been categorically highlighted in agreement dated 30.05.2011. It is pertinent to mention here that in the particular tower no. 2 approximately 160 allottees have obtained possession. Further, out of aforesaid 160 allottees as many as fifteen allottees have started their business ventures.
45. That Mr Anil Mehta had sent email dated 08.12.2017 wherein once again, he had raised absolutely false and frivolous contentions on behalf of the complainants. It was illogically and irrationally claimed that maintenance charges would be liable to be paid by respondent no. 1. By virtue of said email, refund of

entire amount had been demanded by the complainants. In response to the said email, the respondent no. 1 had sent email dated 12.12.2017 whereby it reiterated its commitment to register the unit. As always, the complainants had once again sent a non-committal response vide email dated 12.12.2017.

46. That from the perusal of facts delineated, above it is comprehensively established that the complainants are wilful and persistent defaulters in observing their obligations and duties as incorporated in the agreement. In so far as the answering respondent is concerned, the possession of the office space in question has been delivered in terms of the buyer's agreement. There is no default or lapse on its part. The allegations made in the complaint that the answering respondent has failed to complete construction of the apartment and deliver possession of the same within the stipulated time period, are manifestly false and baseless.

47. That as a matter of fact, it is the complainants who have failed to make timely payment of instalments as per the payment plan and have proceeded to make false and baseless allegations against the respondent so as to cover up their own lapses and wilful defaults.

48. That in case of failure to deliver possession of the office space within 36 months, the allottee was entitled to terminate the agreement within 90 days from the expiry of the said period of 36 months in terms of clause 11.3 of the agreement. Furthermore, in case of such failure as referred to above, the respondent was entitled to terminate the agreement in terms of clause 11.4 and

refund the amount collected from an allottee at the rate of 9% per annum simple interest to him. However, only if the respondent decides to not terminate the agreement, it would pay compensation as set out therein to the allottees who have not defaulted under any term of this agreement. It is further pertinent to mention that the respondent would be liable to pay compensation only in cases other than those provided in Clauses 11.1, 11.2, 11.3 and 39 of the agreement. The complainants being in default of remitting payments in terms of schedule of payment incorporated in the agreement are not entitled to any compensation.

49. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

50. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning

area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

51. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

52. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

53. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court

in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

54. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.1 Direct the respondent to refund sum of Rs. 1, 17,10,142/- along with prescribed rate of interest.

55. Some of the admitted facts of the case are that the allotment of the unit was originally made in favour of M/s Devendar Gupta and sons on the basis of application dated 29.09.2008 for Rs. 17,21,520/- exclusive of service tax. Though a part of the sale consideration was paid by the original allottee but the unit allotted was purchased by Mr. Anil Mehta on the basis of agreement to sell (Annexure P/1) dated 27.10.12010. A commercial space buyer's agreement in this regard was executed between them on 30.05.2011 vide annexure P/8. It is not disputed that a tripartite agreement for maintenance of the allotted unit was also executed between Mr. Anil Mehta and the respondents. The due date for completion of the project and offer of possession was fixed as 30.05.2014.

56. The occupation certificate of the project was obtained by the respondent-promoter on 19.06.2014 (annexure R-1) and an intimation of possession of the allotted unit was given to the allottee i.e Mr. Anil Mehta 27.06.2014 vide annexure P/10 and was further reiterated vide letters dated 01.01.2015 and 25.01.2016 (Annexures P/11 and P/25) respectively. In between, certain correspondences through emails beginning from 01.01.2015 to December 2017 were exchanged between Mr. Anil Mehta and the respondent builder with regard to amount due against the allotted unit, registration of its conveyance deed and

maintenance charges but nothing tangible materialised. It is also a fact that on a request made by the allottee namely Mr. Anil Mehta, the allotment of the unit was endorsed in favour of the complainants on 29.06.2016 and who became owner of the same. A perusal of various emails placed on the file by the parties shows that there was dispute with regard to the amount due against the allotted unit besides registration and maintenance charges. Though the matter was agitated by the allottee namely Mr. Anil Mehta and after him by the complainants with the respondents but with no positive results. The project namely DLF Corporate Greens Gurugram was completed in the year 2014 leading to sending its intimation to the allottee(s) for taking possession after clearing the dues right from 29.06.2014 to 25.01.2016 respectively. But the allottees did not come forward seeking possession on payment of dues and besides challenging its validity leading to ultimately seeking refund of the paid up amount vide email dated 08.12.2017. Through Mr. Anil Mehta i.e the original allottee and after him the allottees sought possession of the allotted unit but are now seeking refund of the paid-up amount besides interest and compensation from the respondent-builder. Now, the question for consideration arises as to whether the complainants are entitled to seek refund of the paid-up amount after withdrawing from the project and particularly when after receipt of occupation certificate of the project, possession of the allotted unit was offered earlier to their predecessor in interest and later on to them.

57. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. In this case, the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottees wish to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

58. In the present complaint, an intimation of possession of the allotted unit was made to the complainants on 29.06.2016 after obtaining occupation certificate on 19.06.2014 and the same was followed by reminders dated 01.01.2015 and 25.01.2016 respectively but the allottees did not turn up to take possession and rather challenged the validity of offer of possession, payments due and maintenance charges. Though the amount against purchase of stamp papers and registration taken from the allottees was refunded to them but later on, the allottees failed to take possession of the allotted unit after a valid offer of possession made on the basis of occupation certificate dated 19.06.2014. The project has already been completed by the respondent builder and on the basis of occupation certificate, the allottees were offered possession of the allotted unit. So their case does not fall within the ambit of section 18 (1) of the Act of 2016 and are obligated to take possession of the allotted unit. In the case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.** Civil appeal no. 5785 of 2019 decided on 11.01.2021, a

similar issue arose as in the present case and wherein some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees. Therefore, the plea of the complainants seeking refund of the paid up amount is not legally maintainable. The ratio of law laid down in cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)* is not applicable to the facts of the case in hand.

59. Now, the second and pivotal issue for consideration arises as to whether the complaint filed seeking refund of the paid up amount is maintainable or not. The factual position as detailed in the preceding para is not disputed. The booking of the unit was made originally in the year 2010 by Ms. Devender Gupta and sons on the basis of application dated 29.09.2008. No buyer's agreement with regard to that unit was executed between them. The unit was later on endorsed in favour of Mr. Anil Mehta on 27.10.2010 and who became an allottee of the same. It led to execution of buyer's agreement

between them on 30.05.2011 setting out the terms and conditions of allotment, sale price, dimensions of the unit, payment plan and the due date for completion of the project and offer of possession of the allotted unit. The possession of the allottees unit was to be offered up to 30.05.2014 after completion of the project. The respondent - builder obtained occupation certificate on 19.06.2014 and sent an intimation in this regard to the allottee on 29.06.2014 followed by reminders dated 01.01.2015 and 25.01.2016 respectively. But nothing materialised leading to exchange of correspondence between Mr. Anil Mehta and the respondent builder from the years 2015 to December 2017. Though in between, the respondent builder refunded the amount taken for purchase of stamp paper and registration charges of the unit but neither the allottees took possession of the property nor cleared the dues leading to sending an email for refund of the paid-up amount in December 2017 and ultimately filing the present complaint as detailed above. Both the parties filed written submissions controverting the rival version of each other.

60. It is pleaded on behalf of respondent-builder that on the basis of occupation certificate 19.06.2014, it offered possession of the allotted unit to the allottee(s) on 27.06.2014 followed by reminders dated 01.01.2015 and 25.01.2016 respectively. But neither the allottee(s) cleared the dues nor came forward to take possession of the allotted unit. No doubt, a number of emails were exchanged between the parties but nothing materialised. So, in such a situation, the complaint filed by them seeking refund is not maintainable. A reference in this regard has been made to the

ratio of law laid down in case of **Pramod Kumar Madan Vs. M/s Dlf Limited**, 2022(1) CPR 138 and wherein it was held that when the builder completed the construction and there was no unreasonable delay in offering possession of the allotted unit, then refund can't be allowed. But the contention raised on behalf of complainants is that though occupation certificate of the project was received and offer of possession was made but due to non-receipt of completion certificate, it would fall within the preview of ongoing project and a complaint seeking refund is maintainable in view of ratio of law laid down in cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** earlier reiterated in cases of **Bikram Chatrejee and ors. Vs. Union of India and ors CWP NO. 940 OF 2017** decided on 23.07.2019 and **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)** .

61. There is no dispute about the proposition of law laid down in the above-mentioned cases. However, in the facts and circumstances detailed earlier, the complaint filed by the allottee(s) seeking refund of the paid-up amount is not maintainable under section 18(1) of the act of 2016. The respondent builder completed the project almost within the time agreed upon and offered possession of the allotted unit to the allottee(s). Now the allottee(s) wish to withdraw from the project and seek full refund of the paid up amount after offer of possession which is not permissible. The ratio of law laid down in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)** is

fully applicable to the facts of the case. No law to the contrary has been cited or shown by the complainants. Despite a valid offer of possession, the allottee(s) failed to come forward and take possession of the allotted unit. Though they were aggrieved with some charges raised in the demand letters sent for taking possession but could have deposit the same under protest while complying with the same.

62. It is pleaded on behalf of the complainants that due to raising some unreasonable charges against the allotted unit, they did not come forward to take possession and withdrew from the project ultimately by writing an email dated 08.12.2017. So in such a situation, the complaint filed by them on 26.02.2019 seeking refund of the paid up amount is very much maintainable and is within limitation. But the plea raised on behalf of respondents is that on the basis of occupation certificate dated 19.06.2014 of the project, a valid offer of possession of the allotted unit was made to the complainants vide letter dated 27.06.2014 followed by reminders dated 01.01.2015 and 25.01.2016 respectively. But despite that neither they turned up to clear the outstanding dues nor come forward to take possession of the allotted unit. So in such a situation, their plea with regard to maintainability of the complaint seeking full refund is not maintainable being barred by limitation.

63. No doubt under the law of limitation a, period of three years has been prescribed for initiation of any action for recovery of the

dues but there is a buyer's agreement with regard to the allotted unit executed between the parties on 30.05.2011, detailing the terms and conditions of allotment, payment plan, the due date of possession, procedure for taking possession, failure of intending allottee to take possession, events of defaults and consequences etc. etc. . The allottees were offered possession of the unit after receipt of occupation certificate vide letter dated 27.06.2014 but the matter remained pending for one reason or the other with no positive results and ultimately the allottees moving the respondents for withdrawing from the project on the basis of email dated 08.12.2017 and ultimately filing this complaint seeking full refund on 26.02.2019. If the respondent builder had acted on email dated 08.12.2017 of the complainants, as per buyer's agreement, then the matter would have been different. But nothing materialised leading to filing of the complaint. Though in view of law laid down in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)**, some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made but on their refusal to do so for one reason or the other, the respondent -builder was competent to proceed against them as per terms and conditions of buyer's agreement.

F.II That this Hon'ble Authority may direct the respondents to pay compensation of lease rental income to the complainants.

F.III That this Hon'ble Authority may

direct the respondents to pay compensation for harassment, despair and mental turmoil for continuous follow up.

64. The complainants in the aforesaid relief are seeking relief w.r.t compensation qua loss of rental income, harassment, despair and mental turmoil for continuous follow up. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.,(Supra), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

65. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The complainants are directed to take possession of the allotted unit after paying the amount due to the


respondent-builder within a period of two months from the date of the order.

- II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.25% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- III. In case the allottees failed to turn up to pay the amount due against the allotted unit and take its possession by the due date as given above, then the respondent-builder would be at liberty to proceed against them as per the provisions of buyer's agreement dated 30.05.2011 with regard to cancellation of the allotted unit on ground of non-payment of the dues and refund of the paid up amount after retaining 10% of the basic sale consideration as earnest money plus statutory charges.

66. The complaint stands disposed of.

67. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.11.2022

